

# HOUSE BILL REPORT

## SSB 5931

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### As Passed House - Amended:

April 7, 2009

**Title:** An act relating to licensed mental health practitioner privilege.

**Brief Description:** Regarding licensed mental health practitioner privilege.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Murray, Delvin and Kline).

### Brief History:

#### Committee Activity:

Judiciary: 3/25/09, 3/26/09 [DPA].

#### Floor Activity

Passed House - Amended: 4/7/09, 97-0.

### Brief Summary of Substitute Bill (As Amended by House)

- Establishes an evidentiary privilege for licensed mental health counselors, licensed marriage and family therapists, and licensed independent clinical social workers.

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Edie Adams (786-7180)

### Background:

Mental health counselors, marriage and family therapists, and social workers are licensed by the Department of Health. Licensed social workers include independent clinical social workers and advanced social workers. These licensed providers must maintain the confidentiality of information received from their clients that was necessary in providing

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professional services to them. There are exceptions when: (1) the client authorizes the release; (2) the client brings charges against the licensee; (3) the Secretary of Health subpoenas the records; (4) the licensee must report child abuse, vulnerable adult abuse, or testimony and records at a probable cause hearing regarding involuntary detention; or (5) the licensee reasonably believes that disclosure will avoid or minimize an imminent danger to the client or another person.

Although this confidentiality statute contains a reference to "privilege," the statute does not explicitly state that there is an evidentiary privilege for client communications received by these licensed providers in the course of providing professional services to the client.

The judiciary has the inherent power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. However, the common law and statutory law recognize evidentiary or testimonial privileges as exceptions to compelled testimony. Privileges are generally disfavored in the common law because they impede the court's truth-finding function. Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such importance that they should be protected.

Washington statutory law establishes a number of privileges, including privileges for communications between the following persons: (1) clergy and penitent; (2) attorney and client; (3) spouses or domestic partners; (4) physician and patient; (5) psychologist and client; (6) optometrist and client; (7) law enforcement and firefighter peer support counselor and a law enforcement officer or firefighter; and (8) sexual assault advocate or domestic violence advocate and victim.

**Summary of Amended Bill:**

Privilege is established for licensed mental health counselors, licensed marriage and family therapists, and licensed independent clinical social workers. These professionals may not disclose or be compelled to testify about information received from their clients that was necessary in providing professional services to them. The privilege is subject to the same exceptions that apply under the statute that requires these professionals to maintain the confidentiality of this information.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The privilege created in this bill brings the state law in line with federal law and is an important protection for counselors and therapists and their clients. It is inappropriate to require these professionals to testify about confidential communications. This bill is especially important for veterans who often fear that the decisions they made while

performing their duties on behalf of this country would not be understood by those who have not been in the position of making quick life and death decisions. They are fearful to talk about those decisions even though the treatment they are seeking is primarily to deal with the mental and spiritual concerns that result from their service to this country. Domestic violence victims also have a fear that the abuser will find out they are receiving mental health treatment and will use the court process to continue the abuse.

Confidentiality and privilege are both mentioned in the current law and most people are surprised that counselors, therapists, and their clients are not protected by a privilege. Therapy and counseling are supposed to provide a safe and confidential way to deal with sensitive issues. However, therapists and counselors are being called to testify in court about confidential communications often in family law cases that involve custody disputes between parents. As a result, a parent may file disciplinary charges against the therapist or counselor, putting his or her professional license in jeopardy.

**Persons Testifying:** Carey Morris, Washington Association for Marriage and Family Therapy; Hoyt Suppes, National Association of Social Workers, Washington Chapter; and Adrian Magnuson-White, Washington Mental Health Counselors Association.

**Persons Signed In To Testify But Not Testifying:** None.